

Amendment and Response Under 37 C.F.R. §1.116 - Expedited Examining Procedure

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Serial No.: 10/019,643

Confirmation No.: 1109

Filed: March 20, 2002

For: METHOD AND COMPOSITION FOR AFFECTING REPRODUCTIVE SYSTEMS

Remarks

The Office Action mailed October 21, 2005, has been received and reviewed. Claims 4, 16, 19, 20, 23, 27, 29, and 43 having been amended and claims 44-49 having been added, the pending claims are claims 4, 6, 12-21, 23, 27-29 and 41-49. Reconsideration and withdrawal of the rejections are respectfully requested.

Support for the recitation of a "non-avian zona pellucida protein" in amended claims 4, 23, and 29 and new claim 48 is found throughout the specification. For example, the Examiner is directed to the following portions of the specification for support for a zona pellucida protein that is from an animal other than a bird, *i.e.*, a "non-avian" zona pellucida protein:

The immunogenic composition of the invention preferably comprises at least one of a *mammalian* zona pellucida or avian zona pellucida protein, but alternatively or in addition it can include a zona pellucida protein *from other animals*. (page 4, lines 26-28 of the specification; emphasis added);

Naturally occurring zona pellucida protein used in this embodiment of the immunogenic composition of the invention is not limited by the source of the protein, but is preferably isolated from pigs, birds, or fish. Zona pellucida proteins have been characterized in many different vertebrates, including, for example, *pigs, birds, fish, mice, rabbits, frogs, humans, dogs, cats and primates* (page 5, line 32 to page 6, line 12 of the specification; citations deleted; emphasis added);

and

Preferably, the zona pellucida included in the immunogenic composition . . . is heterologous with respect to the organism to which it is administered. For example, a preferred immunogenic composition for administration to birds contains porcine zona pellucida, which is heterologous with respect to the bird (page 16, lines 6-11 of the specification).

Applicants respectfully submit that the specification provides ample support for the recitation a *non-avian* zona pellucida protein.

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Claims 16, 19, 20, 27, 28, and 43 have been amended to include the limitations of the claims from which they depend. Applicants submit that no new matter is added and no new issues for examination are raised by the amendment of claims 16, 19, 20, 27, 28, and 43. The entry and allowance of amended claims 16, 19, 20, 27, 28, and 43 is respectfully requested.

New claims 44-49 correspond to claims 16, 19, 20, 43, 27, and 28, respectively, as presented in the previous Amendment and Response (filed July 29, 2005). Applicants submit that no new matter is added and no new issues for examination are raised by new claims 44-49. The entry and allowance of new claims 44-49 is respectfully requested.

Examiner Interview

A brief telephonic interview was held between Primary Patent Examiner Patrick Nolan and Applicants' Representative Nancy Johnson on November 2, 2005, in which the objection of claims 16, 19, 20, 27, 28, and 43 was discussed. Examiner Nolan is thanked for the courtesy of these interviews.

Objected claims 16, 19, 20, 27, 28, and 43 were not included in the statement of potential interference (at least claims 4, 6, 12-15, 17, 18, 21, 29, 41, and 42 are believed to interfere with at least claims 11 and 21 of U.S. Patent 6,790,457 (page 2, Office Action mailed October 21, 2005)). It is therefore the Applicants' interpretation that defendant claims 16, 19, 20, 27, 28, and 43 are not included in the potential interference and are allowable if amended to recite the limitations of the claims from which they depend. Accordingly, Applicants present amended claims 16, 19, 20, 27, 28, and 43, amended to include the limitations of the claims from which they depend. The allowance of amended claims 16, 19, 20, 27, 28, and 43 is respectfully requested. If the Applicants' interpretation is incorrect and amended claims 16, 19, 20, 27, 28, and 43 are not allowable, Applicants request a joint interview with a U.S. Patent and Trademark Office Interference Specialist and Examiner Nolan, to discuss the status of amended claims 16, 19, 20, 27, 28, and 43.

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Potential Interference

The Examiner asserted that at least claims 4, 6, 12, 13, 14, 15, 17, 18, 21, 23, 29, 41, and 42 of the application are believed to interfere under 35 U.S.C. §135(a) with at least claims 11 and 21 of U.S. Patent 6,790,457. Applicants respectfully submit that this assertion is moot in view of the amendment of independent claims 4 and 29, drawn to methods practiced in birds, to recite "non-avian zona pellucida protein." Reconsideration and withdrawal of the assertion that at least claims 4, 6, 12, 13, 14, 15, 17, 18, 21, 23, 29, 41, and 42 of the application are believed to interfere under 35 U.S.C. §135(a) with at least claims 11 and 21 of U.S. Patent 6,790,457 is requested.

Objection to claims

The Examiner objected to claims 16, 19, 20, 27, 28, and 43. Applicants submit that this objection is moot in view of the amendment of claims 16, 19, 20, 27, and 43 to include the limitations of the claims from which they depend and the amendment of claim 43 to correct the spelling of "STDCM." Withdrawal of the objection to the claims is respectfully requested.

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Summary

It is respectfully submitted that the pending claims 4, 6, 12-21, 23, 27-29, and 41-49 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted for
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December 16, 2005
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CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 16 day of DEC, 2005, at 11:30 A.M. (Central Time).

By: Sandy Truchart
Name: Sandy Truchart